

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P.No.1681 of 2015

1. A.S.Suresh Kumar
2. V.Jaganathan
3. M.Dandapani
4. R.Sowminarayanan
5. E.Sivaprasad
6. D.Thiagarajan
7. G.Sampath
8. L.V.Ramamurthy
9. B.Jaganathan
10. K.Ganesan
11. T.K.Vijaya Rajan
12. P.Sahadevan
13. T.Sударасан
14. R.Kumar
15. M.Sundaram
16. C.Palani
17. R.Mani

..... Petitioners

Vs.

1. The Registrar
Central Administrative Tribunal,
Chennai Bench, Family Court Buildings,
Madras High Court, Chennai - 600 104.
2. Union of India
Rep. by Secretary to Government,
Ministry of Personnel, Public Grievances & Pension,
(Department of Personnel & Training),
North Block, New Delhi - 1.
3. The Chairman
Railway Board,
Rail Bhavan,
New Delhi - 110 001.
4. The General Manager
Integral Coach Factory (ICF),
Chennai - 600 038.

5. The Chief Personnel Officer
Integral Coach Factory, (ICF),
Chennai - 600 038.

6. The Senior Personnel Officer / WS
Integral Coach Factory (ICF),
Chennai - 600 038. Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking an order to issue a writ of certiorarified mandamus, to call for the records of the first respondent made in O.A.No.908 of 2011, vide order, dated 03.11.2014 and quash the same and consequently, direct the official respondents to grant the revised pay to the applicants by extending the benefit of the MACP scheme in favour of the applicants by fixing the grade pay from the date on which the said benefit was extended to their Juniors and to disburse the accrued arrears within a reasonable time frame.

For Petitioners : Mr.B.Jegannath
For Respondents : R1 - Tribunal
Ms.M.Jayashree
for Mr.V.T.Balaji for R2
Mr.V.G.Sureshkumar for R3 to R6

ORDER

(Order of the Court was made by P.KALAIYARASAN, J)

This writ petition has been filed under Article 226 of the Constitution of India, seeking to issue a writ of certiorarified mandamus to quash the order of the Central Administrative Tribunal (Madras Bench), dated 03.11.2014 in O.A.No.908 of 2011 and consequently, direct the official respondents to grant the revised pay to the petitioners by extending the benefit of the MACP Scheme.

2. The facts of the case in nutshell are as follows :

(i) The petitioners were appointed as Khalasi in Group D in the Integral Coach Factory on various dates between the years 1977 to 1983. They appeared for the trade test examination and after passing the examination, they were appointed as Technician Gr.III in Group C. After such appointment, the petitioners were promoted as Technician Gr.II and thereafter, promoted as Technician Gr.I.

(ii) As per the recommendations of the VI Central Pay Commission, Modified Assured Career Progression Scheme (MACPS) was accepted by the Government. As per the scheme, three financial upgradations are extended on completion of 10, 20 and 30 years of regular service. As per the scheme, upgradation was extended to some of the juniors to the petitioners in Gr.III. The petitioners sent representation to

extend the benefit of the scheme to them but the same was rejected, on the ground that the petitioners were appointed in Group 'D' service and already three promotions were conferred on the petitioners.

3. Aggrieved against the order of rejection, the petitioners filed O.A.No.908 of 2011 before the Tribunal. The Central Administrative Tribunal dismissed the Original Application on 03.11.2014. Therefore, the petitioners preferred the present writ petition.

4. The learned counsel appearing for the writ petitioners contends that the implementation of MACP by extending the benefits to the juniors, which is contrary to the Fundamental Rule 22 is unconstitutional and violative of Article 14 of the Constitution of India; that rejection by the authorities is nothing but denial of legitimate expectation of the petitioners; that taking the promotion of petitioners from Group 'D' to Group 'C' as first promotion is totally unjustifiable, unconstitutional and unreasonable and therefore, the order of the Tribunal is to be struck down.

5. The learned counsel appearing for the respondents 3 to 6 per contra contends that as per the MACP Scheme and the guidelines, the promotion from Group 'D' to Group 'C' should also be taken into account for the purpose of this Scheme; that as per the scheme, no stepping up of pay in the pay band or Grade pay is admissible on account of junior getting more pay than the senior; that promotions / financial upgradation earned by the existing Group D employees to Grade Pay Rs.1,900/- has to be counted for the purpose of MACPs and the Tribunal after thoroughly considering the entire facts, has rightly dismissed the Original Application and the same does not warrant any interference.

6. There is no dispute that the petitioners were appointed as Khalasi in Group 'D' in the Integral Coach Factory on various dates between the year 1977 to 1983. After writing examinations, they were appointed in Group 'C'. Modified Assured Career Progression (MACP) Scheme was introduced in 2009, pursuant to the recommendations of the VI Pay Commission. As per the scheme, grant of three financial upgradation at intervals of 10, 20 and 30 years of continuous regular service of Group A, B and C Central Government civilian employees except officers of the organised Group 'A' service was permitted.

7. The main contentions of the writ petitioners are that the clause of inadmissibility of stepping up of pay on the ground of junior getting more pay than the senior is violative of Article 14 of the Constitution of India and selection through examination process from Group 'D' to Group 'C', i.e., from Grade pay 1800 to 1900 is only appointment and the same

cannot be construed as promotion for the purpose of stepping up of pay, as per the Scheme.

8. In the Official Memorandum of the Government of India, dated 19.05.2009, wherein the new MACP Scheme has been introduced, clause 10 reads thus :

"10. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme."

9. Modified Assured Career Progression Scheme, Annexure Clause 20 also reads thus :

"20. Financial upgradation under the MACPs shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay / grade pay under the MACPs."

10. Clarification to the MACP Scheme was issued by the Government of India on 10.06.2009. In this communication, in paragraph 3, it is clarified thus :

"3. The Scheme would be known as MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR RAILWAY EMPLOYEES. This Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group 'A', 'B', and 'C' Railway Employees except officers of the Organised Group 'A' Service. The status of Group 'D' employees would cease on their completion of prescribed training, as recommended by the Sixth Central Pay Commission and would be treated as Group 'C' employees. Casual employees, including those granted 'temporary status' and employees appointed in the Railways only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme. The details of the MACP Scheme and conditions for grant of the financial upgradation under the Scheme are given in Annexure."

11. Further, there is also specific clarification from the Government of India in RBE No.217/2009, dated 10.12.2009 to include promotions / financial upgradations earned by existing Group 'D' employees to Grade Pay of Rs.1900, for the purpose of MACPS. This clarification reads thus :

"Reference is invited to the Board's letter of even number, dated 10.06.2009 regarding the Modified Assured Career Progression

Scheme (MACPS). Consequent upon the implementation of Sixth Pay commissions recommendations, the four pre-revised Group 'D' pay scales, viz., Rs.2550-3200, Rs.2610-3540, Rs.2610-4000 and Rs.2650-4000 have been upgraded and replaced by the revised pay structure of grade pay of Rs.1800 in the pay band PB-1. As per the recommendations of Sixth CPC, Railway servants in these four pre-revised Group 'D' scales have been granted the Group 'C' revised pay structure of grade pay of Rs.1800 in the pay band PB-1. It has been decided on the analogy of para-5 of the Annexure to Board's letter dated 10.06.2009 *ibid* that promotions earned or upgradations granted under ACP Scheme of 01.10.1999 in the past to the four pay scales mentioned above, which now carry the grade pay of Rs.1800/- shall be ignored for the purpose of MACPS. However, promotions / financial upgradations earned by existing Group 'D' employees to grade pay of Rs.1900 (pre-revised scales of Rs.3050-75-3590-80-4590) shall be counted for the purpose of MACPS.

2. This issues with the concurrence of the Finance Directorate of the Ministry of Railways."

12. Admittedly in this case on hand, the petitioners though originally appointed as Group 'D' employees, they were promoted to Group 'C', i.e., Technician Grade III, i.e., from Grade Pay of Rs.1800 to 1900 and subsequently, all the petitioners were promoted to Technician Grade II and then to Technician Grade I. Since the petitioners were brought to Group 'C' by selection through examination, the petitioners claim that their appointment to Group 'C' should not be construed as promotion.

13. The financial upgradation by stepping up of pay for the employees who are languishing in one cadre for a long time under the MACP Scheme is distinct from promotion. The contention that non-entitlement clause on account of junior getting more pay than senior is violative of Article 14 of the Constitution is not sustainable. The petitioners cannot seek to deprive the benefit of Fundamental Rule 22 (I) (a) (1) to the employees, who are getting promotion as per Rules.

14. As already pointed out, the petitioners who are appointed in Group 'D' with Grade Pay of Rs.1800 got promotion as Technician Grade III between 1987 to 1989, i.e., to Grade Pay of Rs.1900. Then they got promotion as Technician Grade II between 1990 to 1992 for the Grade Pay of Rs.2400, then they

got further promotion as Technician Grade I with Grade Pay of Rs.2800 between 1995 to 1997. But private respondents, who were working as Technician Grade III with Grade Pay of Rs.1900 got further promotion as Technician Grade II, Technician Grade I and then Senior Technician. The table below shows the difference between the petitioners and their juniors about their appointment and promotion :

Sl.No.	Appointment	I Promotion	II Promotion	III Promotion
Applicants	Group 'D', Grade Pay Rs.1800/-	Technician Gr.III, Grade Pay Rs.1900/-	Technician Gr.II, Grade Pay Rs.2400/-	Technician Gr.I, Grade Pay Rs.2800/-
Private Respondents	Technician Gr.III, Grade Pay Rs.1900/-	Technician Gr.II, Grade Pay Rs.2400/-	Technician Gr.I, Grade Pay Rs.2800/-	Sr. Technician, Grade Pay Rs.4200/-

15. The petitioners promotion to Technician Gr.III is to be construed only as promotion for the reasons that their initial appointment was in Group 'D' and they were brought to Group 'C' as Technician Gr.III with Grade Pay of Rs.1900/-, after passing out the examination as per Rules.

16. The above table also clinchingly discloses that petitioners cannot seek higher pay on the ground that their juniors are getting more pay than the petitioners, as the juniors were promoted from different cadres, i.e., from Technician Gr.III to Technician Gr.II, whereas the petitioners were promoted from Group 'D' to Technician Grade III, i.e., Group 'C'.

17. There is specific disentitlement clause in the MACP Scheme, to claim pay parity on account of junior getting more pay. Further, stepping up of pay on par with junior arises, as per Railway Rules only when both the senior and junior officers belong to the same cadre. Rule 1316 of Indian Railway Establishment Code Vol.II, provides two conditions for stepping up of pay :

(a) Both the senior and junior officers should belong to the same cadre and the post in which they have been promoted on a regular basis should be identical in the same cadre.

(b) The scales of pay of the lower and higher posts in which they are entitled to draw should be identical.

18. Therefore, the Tribunal has rightly dismissed the Original Application. We do not see any reason to interfere with the orders of the Tribunal and accordingly, the writ

In fine, the writ petition is dismissed, confirming the order dated 03.11.2014 made in O.A.No.908 of 2011 on the file of the Central Administrative Tribunal (Madras Bench), Chennai. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Registrar
Central Administrative Tribunal,
Chennai Bench, Family Court Buildings,
Madras High Court, Chennai - 600 104.
2. The Secretary to Government,
Union of India,
Ministry of Personnel, Public Grievances & Pension,
(Department of Personnel & Training),
North Block, New Delhi - 1.
3. The Chairman
Railway Board,
Rail Bhavan, New Delhi - 110 001.
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Integral Coach Factory, (ICF),
Chennai - 600 038.
6. The Senior Personnel Officer / WS
Integral Coach Factory (ICF),
Chennai - 600 038.

+1 cc to Mr.V.T.balaji, advocate,sr.51237

+1 cc to Mr.A.Jenasenan,advocate,sr.51276.

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krd 22/9

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